

REASONABLE ACCOMMODATION

(No.2 May 2016)

1970

POLICY STATEMENT

(No.2 May 2016)

1970.1

It is the policy of CAL FIRE to provide reasonable accommodation for any qualified applicant or employee with a known disability unless direct threat or undue hardship can be clearly demonstrated. CAL FIRE will not discriminate against any qualified persons with a disability. Reasonable accommodation decisions will be made on the basis of the disabled person's capacity to perform the essential functions of a particular position. All applicants and employees with disabilities will be given consideration for any reasonable accommodation request. Evaluation of requests for reasonable accommodation shall be made on a case-by-case basis in the context of the needs of the individual making the request, as well as the characteristics of the position for which the accommodation is being requested.

ELIGIBILITY

(No.2 May 2016)

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Any qualified CAL FIRE employee or applicant with a known disability is eligible to be considered for reasonable accommodation. A person with a disability is anyone who:

- Has a physical or mental disability that limits (i.e. makes achievement difficult) one or more of that person's major life activities;
- Has a history of such an impairment;
- Is regarded or treated as having or previously having such an impairment;
- Is regarded or treated as having or previously having such an impairment with no presently disabling effects but which may become a qualifying impairment in the future, or
- Has any health impairment that requires special education or related services.

Sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs are specifically excluded and are not protected under DFEH Guidelines.

AUTHORITY

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FEDERAL:

- [Americans with Disabilities Act](#) (ADA), effective for State and local government agencies on January 26, 1992 and [ADA Amendments Act of 2008](#) (ADAAA).
- [Section 504 of the Rehabilitation Act of 1973](#);
- [Federal Pregnancy Discrimination Act, 1978](#).

STATE:

- Civil Service Act - [Government Code Sections 19230-19237](#);
- Fair Employment and Housing Act (FEHA) - Government Code Sections [12925-12928](#) and [12940-12951](#) and [Modified Amended Disability Regulations, Titles 2 & 4 \(December 18, 2012\)](#)
- State policy is provided in the [Reasonable Accommodation Policy Development/Assessment Tool \(SPB/CalHR\)](#), and in the March 19, 1990, SPB Memo to all State Agencies and Employee Organizations on the subject of Reasonable Accommodations Policy for Pregnancy Related Disabilities;
- [Bargaining unit contracts](#) may also contain provisions related to reasonable accommodation.
- The state statutes generally provide greater protection than the ADA or the Rehabilitation Act. CAL FIRE adheres to whichever authority affords greater protection to the applicant or employee, as circumstances permit.

DEFINITIONS

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Reasonable Accommodation (RA)	Any reasonable adjustment made to a job and/or the work environment to adapt to the known physical or mental limitations of a qualified employee with a disability, which would enable the employee to perform the essential functions of the job. Also, any reasonable adjustment made to the application process or test/interview setting to adapt to the known physical or mental limitations of a qualified applicant. RA does not include altering or eliminating essential job functions or creating positions.
ADA	Americans with Disabilities Act
ADAAA	Americans with Disabilities Act Amendments Act of 2008
Applicants	All persons who seek employment with CAL FIRE.

Direct Threat	A significant risk of substantial or imminent harm that cannot be eliminated or reduced to an acceptable level by reasonable accommodation.
Employees	All persons who work for CAL FIRE, including civil service, temporary, emergency, limited-term, seasonal, exempt, and retired annuitant.
Essential Functions	<p>The fundamental job duties of the employment position. A job function may be considered essential for any of several reasons, including, but not limited to one or more of the following:</p> <ul style="list-style-type: none"> • The position exists to perform the function(s). • There are a limited number of employees available to perform the function(s). • The function(s) may be highly specialized, so that the employee in the position is hired for his or her expertise or ability to perform the particular function(s).
FEHA	The Fair Employment and Housing Act is a California law that is similar to the ADA but affords broader protections.
HIPAA	<p>The Health Insurance Portability and Accountability Act of 1996 (HIPAA)</p> <p>The HIPAA Privacy Rule provides federal protections for individually identifiable health information held by covered entities and their business associates and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of health information needed for patient care and other important purposes.</p> <p>The HIPAA Security Rule specifies a series of administrative, physical, and technical safeguards for covered entities and their business associates to use to assure the confidentiality, integrity, and availability of electronic protected health information.</p>
Limits	Limits are determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or RAs, unless the mitigating factor itself limits the major life activity.

Major Life Activities	Major life activities include physical, mental, and social activities and working. Examples include: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, sitting, standing, lifting, and learning. To be limited in the major life activity of working, an individual need only be limited in performing the requirements of a single, particular job.
Manager/ Supervisor	Individuals who manage or direct employees and supervise employees' work.
Marginal Functions	A job function is marginal when the job does not exist to perform the duty or task, and the job would continue if that duty or task was not performed. It could also be deemed marginal if it takes a small percentage of time, there are minor consequences if the duty is not performed, and another employee could readily perform that function.
Medical Condition	Any health impairment related to or associated with a diagnosis of cancer, a record or history of cancer, or a genetic characteristic as defined in GC 12926 (i) (2).
Mental Disabilities	Include, but are not limited to, any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, specific learning disabilities, or any other mental or psychological disorder or condition that limits a major life activity.
Physical Disabilities	Include, but are not limited to, any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine systems.

ROLES AND RESPONSIBILITIES

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1970.5

Role	Responsibilities
<u>Reasonable Accommodation Coordinator (RAC)</u>	<ul style="list-style-type: none"> • Monitors the Department's RA process to ensure equal employment opportunities for individuals with a disability, in accordance with CAL FIRE's Equal Employment Opportunity Policy. • Serves as the Department's resource for RA requests, and ensures the development, revision and dissemination of the Department's Reasonable Accommodation Policy. • Evaluates requests for RA utilizing an interactive and good-faith process and provides written approval or denial of requests within 30 calendar days of receipt, or notifies the employee of a delay due to an incomplete request or an outstanding initial or follow-up request for medical information.
Reasonable Accommodation Coordinator (continued)	<ul style="list-style-type: none"> • Serves as a liaison between employees, supervisors, and managers regarding RA issues. • Contacts the employee's medical provider, if necessary, to obtain additional information regarding the employee's limitations. • Maintains records of RA requests, approvals, and denials for CAL FIRE. • Works with facilities, personnel, purchasing, and other CAL FIRE staff to facilitate implementation of RAs. • Maintains the confidentiality of the requestor at all times. Information regarding individual RAs should be shared on a strictly need-to-know basis.
Managers and Supervisors	<ul style="list-style-type: none"> • Disseminate information regarding RA to employees when requested. • Maintain and update duty statements with identification of essential functions and provide to employees upon request. • Maintain and update physical requirements of position and provide to employee upon request. • Work collaboratively with the RAC and employees on RA requests and facilitate the process by engaging in the interactive process. • Maintain the confidentiality of the requestor at all times. Information regarding individual RAs should be shared on a strictly need-to-know basis.

Applicants	<ul style="list-style-type: none"> Request RA during the exam or interview process by completing the Standard State Application (State Personnel Board Form 678), specifically Item 2.
Employees	<ul style="list-style-type: none"> Initiate the request for RA by notifying the direct supervisor, manager, and/or the RAC, of the need for assistance in performing the essential functions of their job, either verbally or in writing. Work with his or her physician/medical provider to submit the requested information and documentation to substantiate the physical and/or mental limitations and the need for the requested RA to perform the essential functions of the job. Submit a completed CAL FIRE PO-108, along with all necessary and supporting medical documentation to the RAC.
Classification and Pay Unit	<ul style="list-style-type: none"> Assists in timely analysis and/or implementation of the RA by providing information and direction relative to options identified during the interactive process. Maintains the confidentiality of the requestor at all times. Information regarding individual RAs should be shared on a strictly need to know basis.
Medical Provider	<p>Reviews the CAL FIRE PO-199 Essential Functions Duty Statement and the CAL FIRE Physical/Mental Stress Job Description (if applicable) and provides:</p> <ul style="list-style-type: none"> Medical information sufficient to substantiate that the individual has a disability and needs reasonable accommodation. Information or documentation regarding: <ul style="list-style-type: none"> The nature, severity, and duration of the individual's impairment; The activities the impairment limits; The extent to which the impairment limits the individual's ability to perform the activities, and/or: How the reasonable accommodation will assist the individual to perform the essential functions of the job.

ABILITY TO PERFORM ESSENTIAL FUNCTIONS OF POSITION

1970.6

(No.2 May 2016)

RA decisions will be made on the basis of the disabled applicant or employee's ability to perform the essential functions of a particular position. Evaluation of requests for RA shall be made on a case-by-case basis in the context of the needs of the individual making the request, as well as the characteristics of the position for which the accommodation is being requested.

In order for the employee's medical provider to complete the Medical Provider's Report Regarding Request for Reasonable Accommodation on page 2 of the PO-108, the supervisor shall provide the employee with his or her Position Essential Functions Duties Statement (PO-199), [SPB classification specification](#) and, for Bargaining Unit 8 safety classifications, the appropriate CAL FIRE Physical/Mental Stress Job Description. It is important that the physician receives accurate and complete information in order to determine:

- Whether or not the employee has an impairment or medical condition that limits a major life activity;
- Whether or not the disability is permanent;
- The employee's job-related limitations;
- What duties the employee cannot perform with accommodation; and
- What type of accommodation the employee requires.

The degree of job analysis required to identify the essential duties may vary from position to position. Also, refer to the [CalHR Reasonable Accommodation Tool](#) for guidance in making these assessments.

Refer to the CAL FIRE Reasonable Accommodation Guidelines for instructions on requesting reasonable accommodation. The guidelines are available from the Reasonable Accommodation Coordinator or any CAL FIRE supervisor or on the CAL FIRE Intranet at http://calfireweb.fire.ca.gov/library/handbooks/1900/exh_RA_Guidelines.pdf.

TYPES OF REASONABLE ACCOMMODATION

1970.7

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RAs may include, but are not limited to, the following types of actions:

- Making test sites accessible.
- Making written test accommodations in the areas of test administration methods or test content.
- Modifying the work site (this may include rearranging furniture or equipment, installing special equipment, etc.).
- Adjusting work schedules.
- Providing assistive devices.
- Providing Support Services Assistants.
- Adopting flexible leave policies (which may include voluntary medical leave of absence of finite duration).
- Restructuring the job/position duties. Job restructuring should not eliminate the essential functions of the position. Job restructuring may involve altering the method of accomplishing a job duty or switching marginal duties between positions. Prior to restructuring a job for reasonable accommodation purposes, the RAC will obtain information about the limitations of the employee and may
- request that a LHRM C & P Unit Analyst review the duty statement to confirm the essential functions of the position.
- Reassignment to a vacant position.

ALTERNATE JOB PLACEMENT

1970.8

(No.2 May 2016)

If the department concludes that there is no RA that will allow a current employee to perform the essential functions of his or her position, the department must consider placement of the employee in a different position or classification within CAL FIRE.

- Alternative placement is only allowable to vacant positions.
- The employee must be able to perform the essential functions of that position with or without RA. If qualified, the employee may be directly reassigned to that position.

- Placements may be made department wide.
- Retraining may be needed to facilitate the employee's movement into the new position.
- Positions that do not result in a loss of salary must be considered first. Promotions will not be considered as RA.
- Alternative job placement is not required for job applicants.
- If an appropriate position or classification cannot be found within CAL FIRE, the employee may utilize the State of California career search tool at <https://jobs.ca.gov/> to locate an applicable classification with another department in State service, prior to considering a medical demotion, disability retirement, or medical termination.
- CAL FIRE does not have authority to secure a position in another department.

DIRECT THREAT

1970.9

(No.2 May 2016)

To be considered a qualified individual with a disability, an individual must not pose a "direct threat" to their own health or safety or to the health or safety of others when performing the essential functions of the job. Direct threat means a significant risk of substantial or imminent harm that cannot be eliminated or reduced to an acceptable level by reasonable accommodation. A threat that is remote or theoretical is not sufficient to conclude that a person is not a qualified person with a disability. The determination of whether an individual poses a direct threat must be made on a case-by-case basis, considering the following factors:

- The duration of the risk,
- The nature and severity of the potential harm,
- The likelihood that the potential harm will occur, and
- The imminence of the potential harm.

The risk must be current – not speculative or remote. The assessment of risk must be based on objective medical or other factual evidence regarding a particular individual.

EXCEPTIONS TO THE REASONABLE ACCOMMODATION PROCESS

(No.2 May 2016)

1970.10

RA will be provided by CAL FIRE for qualified applicants and employees with the following exceptions:

- If it can be clearly demonstrated that the accommodation would impose an undue hardship on the operation of its program. Undue hardship means that significant difficulty or expense would be incurred by the employer in the provision of the accommodation. The following factors are considered in determining undue hardship:
- The overall size of the department with respect to the number of employees, number and type of facilities, and size of the budget.
- The types of operation including composition, structure, and functions of the Department's workforce.
- The nature and the cost of the accommodation needed.
- For safety positions, the impact of RA on the Department's operational ability to fulfill its emergency response mission must be a consideration.
- If the employee cannot perform the essential job functions even with accommodation.
- If the requested accommodation presents a significant risk of substantial or imminent harm that cannot be eliminated or reduced to an acceptable level.
- If the applicant would not meet the bona fide occupational qualification.
- If another statutory requirement (i.e. safety, OSHA, etc.) preempts the FEHA provision or another affirmative defense under FEHA applies.

INTERACTIVE PROCESS

(No.2 May 2016)

1970.11

The department must engage in an "interactive process" with an individual who requests RA. This requires direct communication and the good-faith exploration of possible accommodations with the individual. The shared goal is to identify an accommodation that allows the individual to compete in the examination or perform the job effectively. The interactive discussion should include the following:

- The essential duties of the employee's position;

- The job related limitations of the employee and how those limitations affect the performance of the essential job duties;
- The medical information needed to support the accommodation request (all medical information will be handled in a confidential manner);
- The RA options available to mitigate the applicant's or employee's limitations and the applicant's or employee's preferred accommodation; and,
- The timetable for making a decision on the employee's accommodation request and for implementing the accommodation.

The department has an obligation to interact with the requesting individual even if the request for an accommodation is not reasonable. The accommodation selected must meet the needs of both CAL FIRE and the individual. The department has a continuing obligation to interact with an individual if the initial reasonable accommodation is not successful.

PREGNANT EMPLOYEES

1970.12

(No.2 May 2016)

In addition to guaranteed leave for pregnant employees, the FEHA requires covered employers to reasonably accommodate an employee's pregnancy and related medical conditions to the same extent as it would accommodate other disabilities. (GC 12945, sub (b)(1).)

Limited duty assignments may also be an alternative for pregnant CAL FIRE employees. For Bargaining Unit 8 employees, the contract waives the sixty-day limitation on limited duty assignments for the condition of pregnancy.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

1970.13

(No.2 May 2016)

The USERRA is a federal law that prohibits employers from discriminating against employees or applicants for employment on the basis of their military status, military obligations, or intent to serve. Under USERRA, if a service member has a disability incurred in, or aggravated during his or her military service, the employer must make reasonable efforts to accommodate the disability and return the service member to the position which he or she would have held if the service member had been continuously employed. If the service member is not qualified for that position due to the disability, USERRA requires the employer to make reasonable efforts to help qualify the service member for a job of equivalent seniority, status, and pay.

TIME FRAMES

(No.2 May 2016)

1970.14

Accommodations on the Job

The department must respond to a request for reasonable accommodation within 30 calendar days from the date of the request, absent an incomplete request or an outstanding initial or follow-up request for medical information.

Accommodations in the Examination Process

The department must respond to a request for reasonable accommodation in a civil service examination within 10 working days.

APPEALS

(No.2 May 2016)

1970.15

If CAL FIRE denies the request for reasonable accommodation or does not respond in writing to the request within the designated period as set forth in 1970.14 (above), the qualified individual may file a complaint of discrimination to CAL FIRE's Equal Employment Opportunity (EEO) Office following the process outlined in CAL FIRE policy section 1422, Internal EEO Complaint Process, within one year of the alleged discrimination or the failure to act. The CAL FIRE EEO Office has 90 days to respond to a complaint of discrimination. The qualified individual may then file a complaint with the State Personnel Board (SPB) within 30 days of the CAL FIRE EEO response, should he or she desire.

Concurrent with an SPB complaint, the qualified individual also has the right to file complaints of discrimination with the California Department of Fair Employment and Housing (DFEH) and the Federal Equal Employment Opportunity Commission (EEOC). Contact information for these agencies is:

SPB (916) 653-0799 or <http://spb.ca.gov/appeals/info.aspx>

DFEH (800) 884-1684 or via email at contact.center@dfeh.ca.gov

EEOC (800) 669-4000 or <http://www.eeoc.gov/employees/howtofile.cfm>

CONFIDENTIALITY

(No.2 May 2016)

1970.16

All personnel involved in the reasonable accommodation process must maintain confidentiality. All documentation and information concerning the medical condition or history of an individual with a disability requesting an accommodation must be collected on forms separate from other forms related to that individual, and must be maintained by the Reasonable Accommodation Coordinator in a file separate from the OPF. The request and supporting documentation, including medical documents, shall be treated as confidential, and access to the records will be limited, except to the extent that:

- All management involved in the reasonable accommodation process be informed about work restrictions or reasonable accommodations approved;
- First-aid and safety personnel be informed if the disability may require emergency treatment;
- The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers, and
- Government officials investigating compliance with law are required to be provided with relevant information upon request.

The Confidentiality of Medical Information Act ([California Civil Code § 56 et seq.](#)) regulates the disclosure of medical information, including personal health information protected under HIPAA, by State agencies. Furthermore, the Information Practices Act of 1977 ([California Civil Code §1798 et seq.](#)), provides for disciplinary, civil, and criminal penalties for misuse of an employee's personal and medical information.

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